

In a PNDA dated September 12, 2017, Voorhees alleged that the appellant, on May 9, 2017, stopped an individual and detained him without sufficient support in the law, which led to an arrest. The appellant's official reports did not match the sequence of events on his body-worn camera to the extent that the appellant embellished and added facts to create circumstances that would support a detention but were not believable. Work restrictions were applied to the appellant in an effort to protect him and the community members while Voorhees investigated the above-described incident. The appellant did not follow the initial restrictions, so more enhanced restrictions were instituted. Voorhees charged the appellant with incompetency, inefficiency, or failure to perform duties; insubordination; inability to perform duties; conduct unbecoming a public employee; and other sufficient cause. It sought the appellant's removal. However, the parties, in September 2017, entered into a Settlement Agreement and General Release that included the following terms: the appellant agreed to submit a resignation during the month of December 2017; Voorhees agreed to accept a resignation in good standing and dismiss the administrative charges; and the appellant agreed not to seek employment with Voorhees in the future. The agreement also expressly noted the following: the appellant understood that if the agreement were not signed, he would have the right to a decision by a hearing officer with regard to continued employment and would have the right to appeal an adverse decision to the Commission; the appellant read and discussed the form and content of the agreement with his attorney, having sufficient time to review it prior to agreeing; the appellant agreed with everything in the agreement; the appellant's attorney negotiated the agreement with his knowledge and consent; and the appellant signed the agreement voluntarily.¹

On appeal to the Civil Service Commission (Commission), the appellant states that the 2015 disciplinary charges were based on the fact that he was given information that the person being served with the TRO did not have a FID card or firearms. He admits that he "should have followed up [himself]," but he trusted his dispatcher to give him proper information. The appellant states that he rectified the problem as soon as it was made known to him. Regarding the 2017 disciplinary charges, the appellant insists that he was justified in making the stop and arrest and in his following actions, and he chose to resign to seek employment elsewhere when he "knew the police department [he] worked for was political and nepotistic" and did not support its officers. The appellant also claims that he was advised by his attorney that "we could fight the case and probably win, but we may get a judge on a bad day that misinterprets the law." Thus, the appellant maintains that his decision to resign was based in part on his attorney's poor advice and guidance, not on his unwillingness to fight or an admission that he did anything wrong.

The appellant further argues that he possesses the qualifications to remain on the eligible list. He notes the following such qualifications: Bachelor's degree in Criminal Justice from Rowan University; over 11 years of law enforcement

¹ The parties also intended that the agreement remain confidential.

experience; five years as an Officer in Charge; five years as a Field Training Officer; experience in criminal investigations and arrests, including narcotics, DUIs, and other criminal offenses; extensive training in various fields of law enforcement; extensive knowledge gained from promotional examinations and training classes; and certification and employment as an EMT.

In response, the appointing authority relies upon the previously described issues during the appellant's employment with Voorhees.

In reply, the appellant complains that in September 2018, Voorhees declined to place his name on a reemployment list.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)7*, allows for the removal of an individual from an eligible list who has a prior employment history that relates adversely to the position sought. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

The Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline and had a prior disciplinary history. For example, in *Strasser v. Camden County* (MSB, decided May 28, 1992), the removal of an eligible from an open competitive list based on the eligible's employment history, which showed that he had resigned while disciplinary charges imposing a removal were pending was upheld. Moreover, in *In the Matter of Darren Grossman* (MSB, decided January 17, 2001), it was found that the candidate's employment history as a Police Officer with Jackson Township (Jackson) was sufficient to remove him from the Police Officer, Township of Marlboro eligible list since he resigned in good standing in exchange for Jackson not proceeding with disciplinary charges. The candidate's past employment record also reflected a three-day suspension as a Police Officer with East Orange. Similarly, in *In the Matter of Ralph Lubin* (MSB, decided May 8, 2001), the candidate's termination was recorded as a resignation in good standing as a result of a settlement agreement, whereby the appointing authority did not recommend or institute criminal proceedings against the appellant in exchange for the appellant resigning in good standing and withdrawing his grievance. The appellant's prior disciplinary history also included a five-day suspension.

Turning to the instant matter, the record indicates that in 2015, Voorhees alleged that the appellant, while serving as a Police Officer, improperly served a TRO. The associated disciplinary charges were sustained, and the appellant was charged

16 hours of vacation time. In 2017, Voorhees alleged that the appellant improperly stopped and detained an individual, embellished and added facts concerning the incident to support the detention, and failed to follow work restrictions. Voorhees proffered various charges and sought to remove the appellant. The parties, however, struck an agreement that permitted the appellant to resign in good standing in exchange for dismissal of the charges but required that the appellant not seek employment with Voorhees in the future. Since the appellant resigned in good standing in exchange for Voorhees not proceeding with disciplinary charges and his employment record included prior discipline, the appointing authority had a valid reason to remove the appellant's name from the eligible list. It is recognized that a County Police Officer is a law enforcement employee who must enforce and promote adherence to the law. County Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects County Police Officers to present a personal background that exhibits respect for the law and rules. Thus, the Commission will not second guess the appointing authority's apparent determination that the adverse items in the appellant's employment history, occurring as they did while the appellant was employed in another law enforcement position, outweighed the various educational and experiential qualifications to which he points. Moreover, the incident underlying the 2017 disciplinary charges occurred approximately two years and four months prior to the examination closing date. As such, it can hardly be said to have been an event in the remote past.

The appellant's attempt to cast his employment history in a more positive light is unavailing. With respect to the 2015 disciplinary charges, the appellant claims that he was given information that the person being served with the TRO did not have an FID card or firearms. The Commission need not entertain this attempt to relitigate the merits of those charges when the appellant himself admits that he "should have followed up [himself]" and presents no evidence that the disciplinary penalty imposed was ever later overturned in an appropriate forum. Any attempt to relitigate the 2017 disciplinary matter is also inappropriate as the appellant voluntarily chose to settle that matter rather than contest the charges. While the appellant paints the decision to resign from his Police Officer position from Voorhees as a choice to leave the employ of a police department generally alleged to be "political and nepotistic," the resignation cannot be delinked from the very specific disciplinary charges that the appellant was then facing, as the settlement agreement itself makes plain. As to the appellant's contention that the settlement resulted in part from poor advice and guidance on his attorney's part, the Commission has no jurisdiction to review what is essentially a claim of legal malpractice. *See, e.g., In the Matter of William J. Bowen* (MSB, decided September 26, 2007). Any potential remedy regarding the appellant's attorney lies elsewhere.

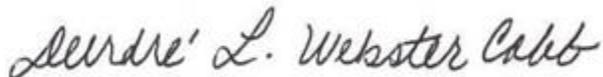
The appellant's complaint that Voorhees declined to place his name on a reemployment list in 2018 is untimely. *See N.J.A.C. 4A:2-1.1* (providing that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed). Nevertheless, the determination as to whether to place the appellant's name on a regular reemployment list rests within the discretion of the appointing authority. That discretion is not reviewable. *See Richard Marinelli v. Department of Personnel*, Docket No. A-1415-97T2 (App. Div. Mar. 9, 2000) (Appellate Division affirmed the decision denying a retired Police Officer regular reemployment, holding that an appointing authority has the discretion to recommend a former employee's reemployment as being in the best interest of the service, which the appointing authority did not do). *See also, In the Matter of Lillian Foster* (MSB, decided October 19, 2005), *aff'd* Docket No. A-6347-05T5 (App. Div. May 30, 2007).

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF JUNE, 2021



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